

## Editorial note

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This Special Issue contains seven papers out of many papers, which were presented at the First International Law and Economics Conference in Turkey. It was organized by Bilkent University Faculty of Law on 25–26 April 2014 in Ankara, Turkey.

After the closing ceremony of the Conference, a group of scholars decided to establish International Law and Economics Association Bilkent (ILEAB): an association, which would further strengthen the relations of the scholars especially from Turkey, Middle East countries and the states in the Balkans, Caucasus and Central Asia. Additionally, Bilkent University has started the initiatives to establish Bilkent University Law and Economics Research Center (BILEC), which would support research and education that focuses on the timely and relevant economic analysis of legal and public policy issues.

The conference showed a remarkable increase of law and economic research in Turkey and other countries from the region. This issue contains a selection seven of these papers, which represent this fruitful and inspiring academic event. The papers in this issue have a special focus on law and economics in Turkey as well as Middle East countries and on questions of developing countries.

Four of the papers examine various aspects of Turkish law from an economic perspective. In their empirical paper, Başak Babaoğlu and Alexander J. Wulf deal with the consequences that arose following the decriminalization of the issuance of bad checks in Turkey. They attempt to find out whether the decriminalization has distorted payments by checks, whether it has created incentives to use other forms of payment, and whether it has led to additional costs for both companies and the

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economy as a whole. Their study contributes to our understanding as to whether the market regards a payment as both credible and reliable, and whether the decriminalization has helped to facilitate payments in commercial transactions. Babaoğlu and Wulf conclude that a country's choice of criminal sanctions can be related to its economic prosperity and that this choice may change over time as its economy grows.

Ash E. Gürbüz Usluel's paper examines single member companies (SMC), which have been introduced for the first time to the Turkish commercial law landscape after the harmonization of the Turkish Commercial Code (TCC) in 2012 in accordance with EU regulations. The article takes the SMC regulation in Turkey as its focal point and evaluates its impact in a comparative analysis looking at different jurisdictions and its economic effects after the enactment of the new TCC. Since single member companies are to be established as limited liability companies under Turkish law, the paper considers the benefits of the limited liability form that can be applied to single member companies in the framework of firm theory. It also examines the benefits and risks of single member companies in terms of transaction costs and assesses the safeguards against the risks in this regard.

Elif Cemre Hazıroğlu and Semih Gökatalay's paper examines the treatment of minimum resale price maintenance (RPM) in EU competition law in the aftermath of the Leegin decision of the US Supreme Court. The authors also focus on the recent Expedia decision of the CJEU and the draft De Minimis Notice of 2013. They argue that as for the recent developments in Turkey regarding its competition policy, it could be supposed that she will not benefit minimum RPM schemes from the de minimis rule, of which the introduction by the proposed amendment is anticipated, since the impulsive force of the amendment has been the fulfillment of obligations presented in the EU progress reports, hence the recitation of the EU model. The authors come to the conclusion that ideally, Turkey could make an effective use of Article 5 of Competition Law in the application of both the de minimis rule and the block exemption regulation for vertical restraints.

Hans-Bernd Schäfer and Hüseyin Can Aksoy examine the principle of good faith from an economic perspective and relate this perspective to cases of the Turkish Supreme Court. The authors argue that if the principle of good faith is used to develop contract law into an instrument for redistributing wealth in favor of poor parties, this can destroy the concept of contract as a social mechanism for generating mutual gains for parties and result in efficiency losses. Therefore, the principle of good faith must be carefully and reluctantly used to curb opportunistic behavior of parties and preserve the ex ante mutual gain from a contract. If the courts restrict the application of the good faith principle to this function, it provides elasticity and saves transaction costs and is therefore in line with economic reasoning. In the end, the authors come to the conclusion that the Turkish Supreme Court's application of the principle is in line with economic reasoning.

Moamen Gouda's paper focuses on a matter, which has significant importance in Islamic law. The paper attempts to apply economic analysis to shari'a or Islamic criminal law, in particular, that aspect of the law pertaining to theft. The author points out that although deterrence is one of the main objectives of Islamic criminal law, from the viewpoint of marginal deterrence and multiplier principles, lesser

crimes with low social harm are punished more severely with hadd whereas crimes with high social harm are punished with ta'zir. Moreover, as the probability of detection and sanction is less in those crimes of high social harm, criminals would have more incentive to commit them. The study concludes that if Islamic criminal law is to be applied in its current form, crimes of high social cost are likely to become more frequent as it fails to provide deterrence in important areas of crime.

Gönenç Gürkaynak, Ayşe Güner, Sinan Diniz and Janelle Filson focus on the most-favored nation (MFN) clauses. The authors review the existing case law/decisional practice concerning the anti-trust scrutiny of MFN clauses in a variety of jurisdictions including the European Union, the United States, EU member states (with an emphasis on Germany and the UK) and Turkey. Against this background, they argue that a purely case-by-case approach to MFNs is sub-optimal for a variety of reasons and that published guidelines on the use of MFNs, containing presumptions and safe harbors, would be both efficient and useful from the perspective of antitrust enforcement agencies, as well as businesses and legal practitioners. They also provide a preliminary sketch as to what such a guideline may look like and recommend a set of presumptions and safe harbors that should be included.

In an empirical study Rahul Suresh Sapkal shows the interactive effect of strict Employment Protection Legislation (EPL) and enforcement intensity on the incidence of temporary contract workers in Indian manufacturing sector. To exploit the interaction effect, the study uses the state level amendments to Industrial Dispute Act of 1947, and the average size of total number of labour inspectors for each state to capture the variation in labour regulation and enforcement intensity across thirty-one Indian states for the period 2000–2007. Overall the study reports that firms located in strict EPL states hire differentially more temporary contract workers in response to intensified enforcement of labor law.

In sum, this Special Issue is composed of seven articles, which represent an ambitious academic initiative, which was only possible by cooperation of several contributors. We would like to thank the editors of the European Journal of Law and Economics Jürgen Backhaus, Alain Marciano and Giovanni Ramello for supporting our goal of promoting law and economics in Turkey and in the region by allocating this whole issue to a selection of papers, which were presented at our Conference. We also thank them for their continuous and most valuable work in the process of editing. We are grateful to Bilkent University and our sponsor Hukuk and Araştırma law office for their generous supports, which made the conference possible. Most of all, we wish to thank the authors for their contributions and our colleagues who diligently peer-reviewed the submissions for this issue.